



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Bayside Property Services Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes                      OPR, MNR, MNDC, MNSD, FF

### Introduction

This hearing dealt with an application by the landlord for an order of possession; a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement; and to recover the RTB filing fee.

A representative of the landlord attended the teleconference hearing and gave evidence, however the tenant did not attend. The landlord gave evidence that she served the tenant with the Notice of a Dispute Resolution Hearing and Landlord's Application for Dispute Resolution by registered mail on April 10, 2014. Her evidence is that she also served the tenant with the amended Landlord's Application for Dispute Resolution by registered mail on May 12, 2014. I find the tenant was properly served.

The landlord gave evidence that the tenant has moved out and so she no longer requires an order of possession.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order as claimed?

### Background and Evidence

The tenancy agreement signed by the parties on December 15, 2013 indicates the tenancy started on January 1, 2014 and the tenant was obligated to pay rent of \$850.00 monthly in advance on the first day of the month. The tenant also paid a security deposit of \$425.00, a pet deposit of \$425.00, and a key deposit of \$10.00.

The tenancy agreement has an addendum which contains the following clauses:

1. The Tenant(s) agrees to an initial 12 month fixed term tenancy. If the Tenant(s) breaches a material term of this Agreement that causes the Landlord to end the tenancy before the end of the fixed term, or if the Tenant(s) provides the Landlord with notice, whether written, oral, or by conduct, of an intention to breach this Agreement and end

the tenancy by vacating, and does vacate before the end of any fixed term, the Tenant(s) will pay to the Landlord the sum of \$425 as liquidated damages and not as a penalty for all costs associated with re-renting the rental unit. Payment of such liquidated damages does not preclude the Landlord from claiming future rental revenue losses that will remain unliquidated, as well as any other amounts owed by the Tenant(s), such as unpaid rent or for damage to the rental unit or residential property. [the "Liquidated Damages Clause"]

2. Rent is due and payable monthly before or on the FIRST day of each month. The Tenant(s) agrees to pay an additional \$25.00 per for any late payments, and an additional \$25.00 per for any NSF cheques.

The landlord gave evidence that she served the tenant with a Notice to End Tenancy for Unpaid Rent (the "Notice") on March 8, 2014 by putting the Notice through the mail slot in the tenant's door. Section 90 provides that a Notice served in this manner is deemed to be received by the tenant three days later, in this case on March 11, 2014. The Notice states the tenant failed to pay rent of \$1,725.00 that was due on March 1, 2014. The landlord gave evidence that the tenant did not pay any rent for February or March 2014 and so the outstanding rent on the date the Notice was served was \$1,700.00. The landlord also applied a \$25.00 late fee, which is permitted by the tenancy agreement.

The landlord gave evidence that the tenant did not make any further rental payments, and moved out in approximately the last week of May 2014.

The landlord claims: four months' unpaid rent totalling \$3,400.00, four late fees totalling \$100.00, liquidated damages of \$425.00 per the Liquidated Damages Clause, and the RTB filing fee of \$50.00, for a total monetary claim of \$3,975.00.

The landlord's position is that the Liquidated Damages Clause is applicable because paying rent is a material term of the tenancy agreement, and the tenant breached that term resulting in the landlord ending the tenancy.

### Analysis

I find the tenant received the Notice on March 11, 2014. I accept the landlord's undisputed evidence that the tenant did not pay rent for the months of February, March, April, and May 2014, and that the tenant occupied the rental unit until approximately the last week of May 2014. I find the landlord is entitled to a monetary order for four months' unpaid rent of \$3,400.00.

I find the landlord is also entitled to four months' late fees of \$25.00 per month (totalling \$100.00), since such fees are stipulated in the tenancy agreement. The landlord is further entitled to recover the RTB filing fee of \$50.00.

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the amount of damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

In this case, I agree with the landlord that paying rent is a material term of the tenancy agreement and I agree that the tenant breached that term. I note that the Liquidated Damages Clause applies to costs associated with re-renting the rental unit and specifically is not intended to address future rental losses. It is not clear to me that \$425.00 is a genuine pre-estimate of the cost of re-renting a rental unit. As well, the landlord did not indicate how the landlord might incur costs of \$425.00 to re-rent the rental unit. For that reason, I find that the liquidated damages amount is a penalty rather than a genuine pre-estimate of loss and for that reason I find the clause to be unenforceable. I dismiss the claim for liquidated damages.

The total amount due the landlord is \$3,550.00, comprised of \$3,400.00 unpaid rent, \$100.00 late fees, and \$50.00 RTB filing fee. I order that the landlord retain the security deposit of \$425.00, the pet deposit of \$425.00, and the key deposit of \$10.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$2,690.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### Conclusion

I grant the landlord a monetary order for \$2,690.00.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 17, 2014

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Residential Tenancy Branch

